

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1217 OF 2000

Abida Mohammed Dossa,)
Major, Occupation Business,)
residing at 5/6th Floor, White)
House, Narayan Dhuru Street,)
Mumbai - 400 003.) ... Petitioner

Versus

1. Union of India)
2. The Competent Authority,)
SAFEMA, C Wing, Mittal Court,))
3rd Floor, Nariman Point,)
Mumbai - 400 021.)
3. The State of Maharashtra) ... Respondents

Mr. P.K. Dhakephalkar with Mr. Vijay Nair, Mr. S.K.
Srivastav and Ms. Smita Ranpise i/b M/s. S.K.
Srivastav & Co. for the petitioners.

Mr. R.F. Lambay with Mr. D.T. Palekar, P.Ps. for the
Union of India.

Mr. B.R. Patil, Act.P.P. for the State.

ALONG WITH

CRIMINAL WRIT PETITION NO.1218 OF 2000

Rehmat Haroon Merchant)
Formerly known as Rehmat Haroon)
Dossa, 701, Hayat palace, 7th)
floor, Opp. Nair Hospital, Dr.)
B.N.Road, Mumbai - 400 008.) ... Petitioner

Versus

1. Union of India)
2. The Competent Authority,)
SAFEMA, C Wing, Mittal Court,))
3rd Floor, Nariman Point,)
Mumbai - 400 021.)
3. The State of Maharashtra) ... Respondents

Mr. P.K. Dhakephalkar with Mr. Vijay Nair, Mr. S.K. Srivastav and Ms. Smita Ranpise i/b M/s. S.K. Srivastav & Co. for the petitioners.

Mr. R.F. Lambay with Mr. D.T. Palekar, P.Ps. for the Union of India.

Mr. B.R. Patil, Act.P.P. for the State.

ALONG WITH

CRIMINAL WRIT PETITION NO.1219 OF 2000

Yasmin Hanif Landa,)
Shop No.24, Ground floor,)
Manish Market, Palton Road,)
Mumbai - 400 001.) ... Petitioner

Versus

1. Union of India)
2. The Competent Authority,)
SAFEMA, C Wing, Mittal Court,))
3rd Floor, Nariman Point,)
Mumbai - 400 021.)
3. The State of Maharashtra) ... Respondents

Mr. P.K. Dhakephalkar with Mr. Vijay Nair, Mr. S.K. Srivastav and Ms. Smita Ranpise i/b M/s. S.K. Srivastav & Co. for the petitioners.

Mr. R.F. Lambay with Mr. D.T. Palekar, P.Ps. for the Union of India.

Ms. A.S. Pai, A.P.P. for the State.

ALONG WITH

CRIMINAL WRIT PETITION NO.1220 OF 2000

Mustafa Ahmed Dossa)
Shop No.22/F(4), Ground floor,)
Manish Market, Palton Road,)
Mumbai - 400 001.) ... Petitioner

Versus

1. Union of India)
2. The Competent Authority,)
SAFEMA, C Wing, Mittal Court,))
3rd Floor, Nariman Point,)

Mumbai - 400 021.)

3. The State of Maharashtra) ... Respondents

Mr. P.K. Dhakephalkar with Mr. Vijay Nair, Mr. S.K. Srivastav and Ms. Smita Ranpise i/b M/s. S.K. Srivastav & Co. for the petitioners.

Mr. R.F. Lambay with Mr. D.T. Palekar, P.Ps. for the Union of India.

Ms. A.S. Pai, A.P.P. for the State.

ALONG WITH

CRIMINAL WRIT PETITION NO.1221 OF 2000

Mehrunisa Abdul Keder,)
Shop No.27, Ground floor,)
Manish Market, Palton Road,)
Mumbai - 400 001.) ... Petitioner

Versus

1. Union of India)

2. The Competent Authority,)
SAFEMA, C Wing, Mittal Court,))
3rd Floor, Nariman Point,)
Mumbai - 400 021.)

3. The State of Maharashtra) ... Respondents

Mr. P.K. Dhakephalkar with Mr. Vijay Nair, Mr. S.K. Srivastav and Ms. Smita Ranpise i/b M/s. S.K. Srivastav & Co. for the petitioners.

Mr. R.F. Lambay with Mr. D.T. Palekar, P.Ps. for the Union of India.

Mr. D.S. Mhaispurkar, A.P.P. for the State.

ALONG WITH

CRIMINAL WRIT PETITION NO.1222 OF 2000

Safia Mustafa Dossa)
Shop No.15A & B, Ground Floor,)

Manish Market, Palton Road,)
Mumbai - 400 001.) ... Petitioner

Versus

1. Union of India)
2. The Competent Authority,)
SAFEMA, C Wing, Mittal Court,))
3rd Floor, Nariman Point,)
Mumbai - 400 021.)
3. The State of Maharashtra) ... Respondents

Mr. P.K. Dhakephalkar with Mr. Vijay Nair, Mr. S.K.
Srivastav and Ms. Smita Ranpise i/b M/s. S.K.
Srivastav & Co. for the petitioners.

Mr. R.F. Lambay with Mr. D.T. Palekar, P.Ps. for the
Union of India.

Mr. D.S. Mhaispurkar, A.P.P. for the State.

ALONG WITH

CRIMINAL WRIT PETITION NO.1223 OF 2000

1(a). Mrs.Amina Ahmed Umar Dossa)
of Mumbai, Indian Inhabitant,)
residing at 701, Hayat Palace,)
Opp. Nair Hospital, Agripada,)
Mumbai - 400 008.)

1(b). Haroon Merchant S/o. Ahmed)
Umar Dossa, of Mumbai, Indian)
Inhabitant, residing at 701,)
Hayat Palace, Opp. Nair Hospital))
Agripada, Mumbai - 400 008.)

1(c). Mrs.Sabira W/o.Salim Memon)
of Mumbai, Indian Inhabitant,)
residing at 12 B, Zaveri Mansion)
4th Floor, Agripada, Mumbai)
400 008.)

1(d). Mrs.Yasmin W/o.Hanif Landa)
of Mumbai, Indian Inhabitant,)
residing at Hamid Building, 3rd)
Floor, 10 Pakadi Road, Agripada)
Mumbai - 400 011.) ... Petitioners

Versus

1. Union of India)
2. The Competent Authority,)
SAFEMA, C Wing, Mittal Court,))
3rd Floor, Nariman Point,)
Mumbai - 400 021.)
3. The State of Maharashtra) ... Respondents

Mr. P.K. Dhakephalkar with Mr. Vijay Nair, Mr. S.K. Srivastav and Ms. Smita Ranpise i/b M/s. S.K. Srivastav & Co. for the petitioners.

Mr. R.F. Lambay with Mr. D.T. Palekar, P.Ps. for the Union of India.

Mrs. Kantharia, A.P.P. for the State.

ALONG WITH

CRIMINAL WRIT PETITION NO.1224 OF 2000

Amina Ahmed Dossa)
Shop No.31, Ground floor,)
Manish Market, Palton Road,)
Mumbai - 400 001.) ... Petitioner

Versus

1. Union of India)
2. The Competent Authority,)
SAFEMA, C Wing, Mittal Court,))
3rd Floor, Nariman Point,)
Mumbai - 400 021.)
3. The State of Maharashtra) ... Respondents

Mr. P.K. Dhakephalkar with Mr. Vijay Nair, Mr. S.K. Srivastav and Ms. Smita Ranpise i/b M/s. S.K. Srivastav & Co. for the petitioners.

Mr. R.F. Lambay with Mr. D.T. Palekar, P.Ps. for the Union of India.

Mrs. Kantharia, A.P.P. for the State.

ALONG WITH

CRIMINAL WRIT PETITION NO.1225 OF 2000

Sabira Salim Memon,)
Shop No.14, Ground floor,)
Manish Market, Palton Road,)
Mumbai - 400 001.) ... Petitioner

Versus

1. Union of India)
2. The Competent Authority,)
SAFEMA, C Wing, Mittal Court,))
3rd Floor, Nariman Point,)
Mumbai - 400 021.)
3. The State of Maharashtra) ... Respondents

Mr. P.K. Dhakephalkar with Mr. Vijay Nair, Mr. S.K.
Srivastav and Ms. Smita Ranpise i/b M/s. S.K.
Srivastav & Co. for the petitioners.

Mr. R.F. Lambay with Mr. D.T. Palekar, P.Ps. for the
Union of India.

Mrs. U.K. Kejriwal, A.P.P. for the State.

ALONG WITH

CRIMINAL WRIT PETITION NO.1226 OF 2000

Haroon Ahmed Merchant)
Formerly known as Haroon Ahmed,)
Shop No.24, Ground floor,)
Manish Market, Palton Road,)
Mumbai - 400 001.) ... Petitioner

Versus

1. Union of India)
2. The Competent Authority,)
SAFEMA, C Wing, Mittal Court,))
3rd Floor, Nariman Point,)
Mumbai - 400 021.)
3. The State of Maharashtra) ... Respondents

Mr. P.K. Dhakephalkar with Mr. Vijay Nair, Mr. S.K.
Srivastav and Ms. Smita Ranpise i/b M/s. S.K.
Srivastav & Co. for the petitioners.

Mr. R.F. Lambay with Mr. D.T. Palekar, P.Ps. for the
Union of India.

Mrs. U.K. Kejriwal, A.P.P. for the State.

**CORAM: SMT. RANJANA DESAI &
A.S. OKA, JJ.**

DATED: 20TH OCTOBER, 2004.

ORAL JUDGMENT:- (Per Smt. Ranjana Desai, J.)

1. The petitioners in this group of petitions are relatives of one Mohammed Dossa. These petitions arise out of similar facts and involve identical legal contentions. We propose to deal with Writ Petition No.1217 of 2000. The view taken by us in that petition will dispose of all the connected petitions. Hence this common judgment.

2. In Writ Petition No.1217 of 2000, the petitioner is the wife of one Mohammed Ahmed Umar Dossa against whom an order of detention dated 20/3/1993 was issued by the Government of Maharashtra, Home Department (Spl.), Mantralaya, Bombay, under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (for short, "the COFEPOSA Act"). It is an admitted position that the said order is not yet executed. The said Mohammed Dossa has not surrendered to the detention order.

3. It is also an admitted position that the show cause notice dated 23/5/1995 was issued by the Competent Authority under the provisions of the Smugglers and

Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (for short, "the SAFEMA"). The said notice made reference to the order of detention issued against the said Mohammed Dossa and further stated that the said order is neither revoked nor quashed and set aside by any court of competent jurisdiction and, therefore, the said Mohammed Dossa is a person to whom the provisions of section 2(2)(b) of the SAFEMA are applicable and any illegally acquired property of the said Mohammad Dossa is liable to be forfeited under the provisions of section 3(1) of the SAFEMA. The said notice further went on to refer to the present petitioner as the wife of said Mohammed Dossa. The relationship between the said Mohammed Dossa and other petitioners was also clearly stated. It was then concluded that all these persons are persons covered under section 2(2)(c) of the SAFEMA and any illegally acquired property acquired by them is liable to be forfeited under section 4 of the SAFEMA, free from all encumbrances. The properties of said Mohammed Dossa, and the petitioners were then described. The said notice then stated that the petitioners had not been able to produce any record to establish that the said properties were not illegally acquired. The notice, therefore, called upon the petitioners to show cause as to why the said properties should not be forfeited to the Central Government, free from all encumbrances.

4. According to the petitioner, she appeared before the Competent Authority; filed a reply and gave an

explanation. However, the Competent Authority by its order dated 29/2/2000 passed under sections 7 and 19 of the SAFEMA ordered that all the properties which were mentioned in the notice be forfeited.

5. Being aggrieved by the said order, the petitioner has preferred an appeal to the Appellate Tribunal (for short, "the Tribunal") against the forfeiture of the properties being FPA No 30/Bom/2000. In the said appeal, it was, inter alia, contended that there was no valid detention order passed against the said Mohammed Dossa. The petitioner filed an application in the said appeal praying that the petitioner be supplied with copies of the detention order and the grounds of detention as the grounds of detention were the evidence which were being used against her and neither the detention order nor the grounds of detention say that the detention order was issued under the COFEPOSA Act. On 7/8/2000, the Tribunal passed an order in which it was noted that there was no reference to the requirement of any provisions of law under which the Competent Authority was obliged to supply a copy of the order of detention. However, it was necessary for the Competent Authority to satisfy the Tribunal that the order of detention was, in fact, made under the provisions of the COFEPOSA Act, when a specific contention is raised on behalf of the appellants, specially in view of the fact that neither the reasons recorded nor the order under section 7(1) of the SAFEMA indicated that, in fact, the order of detention was made

under the provisions of the COFEPOSA Act.

6. It appears that on 11/8/2000, the Competent Authority produced a copy of the detention order for the perusal of the Tribunal. On 16/8/2000, the Tribunal after perusing the said order, observed that it had directed the Competent Authority to produce the detention order in order to satisfy itself as to whether the detention order was made in exercise of the powers conferred under section 3 of the COFEPOSA Act, which alone confers jurisdiction on the Competent Authority for proceedings under the SAFEMA, unless the proviso to section 2(2)(b) of the SAFEMA is attracted. The Tribunal noted that accordingly, the detention order was produced and the Tribunal had perused it and the Tribunal was satisfied that the Government of Maharashtra, Home Department (Special) by their order dated 20/3/1999 directed the detention of Mohammed Dossa @ Tiger Majnoo. It was further observed that the said detention order has not been revoked by the Advisory Board nor was it set aside by any court of competent jurisdiction.

7. In this petition, the petitioner has challenged the said order. We have heard, at considerable length, Mr. Dhakephalkar, the learned counsel appearing for the petitioners. Mr. Dhakephalkar contended that a person to whom a show cause notice is issued under section 6 of the SAFEMA is entitled to get a copy of the detention order if demanded. He further submitted that a valid

detention order is a sine qua non for the proceedings under the SAFEMA and, therefore, the person to whom the notice is issued under section 6 of the SAFEMA is entitled to a copy of the detention order to raise contentions before the Authority that the order on which the SAFEMA proceedings are initiated is not valid. Mr. Dhakephalkar lastly contended that the principles of natural justice require that if such a person makes a demand, a copy of the order of detention and the grounds of detention be supplied to him. In support of his submission, Mr. Dhakephalkar relied on the judgments of the Supreme Court in Competent Authority, Ahmedabad v. Amritlal Chandmal Jain and others, 1998 AIR SCW 1953; Karimaben K. Bagad v. State of Gujarat and others, 1998 SCC (Cri.) 1445 and a Division Bench judgment of this court in Mr. Bhanabhai Khalpabhai Patel v. State of Goa and others in Writ Petition No.412 of 1996. Mr. Dhakephalkar also drew our attention to the judgment of the Supreme Court in Additional Secretary to the Government of India and others v. Smt. Alka Subhash Gadia and another, 1992 Supp.(1) SCC 496 and contended that while it is true that the detention order can be challenged at the pre-execution stage only in five circumstances as mentioned in the said judgment and that unless a detenu surrenders he is not entitled to the copy of detention order and grounds of detention there is no absolute prohibition in that regard. Mr. Dhakephalkar also relied on the judgment of the Supreme Court in Smt. Maneka Gandhi v. Union of India and another, AIR 1978 SC

597 and contended that if the detention order and the grounds are not supplied to the petitioner there would be a breach of the principles of natural justice.

8. Mr. Lambay, the learned counsel appearing for the Union of India and Mr. B.R. Patil, learned Act. P.P. appearing for the State, on the other hand, contended that the said Mohammed Dossa is evading detention. Relying heavily on Smt. Alka Subhash Gadia's case (supra), Mr. Lambay contended that the detenu, who has not surrendered is not entitled to the detention order and the grounds of detention. It is quite evident from the facts of this case that the petitioner and her relatives are making an ingenious effort to get a copy of the detention order and the grounds of detention under the pretext that they want to challenge the SAFEMA proceedings. He submitted that in Smt. Alka Subhash Gadia's case (supra), the Supreme Court has voiced a note of caution about such eventualities. The learned counsel contended that, in any case, to challenge the SAFEMA proceedings, the order and grounds of detention are not necessary at all because all that the petitioner has to show is that the property is not traced to the detenu. The learned counsel also relied on the judgment of the Supreme Court in Union of India and others v. Vidya Bagaria, 2004 Cri.L.J. 2480, where the same view is reiterated by the Supreme Court. He also drew our attention to yet another judgment of the Supreme Court in

State of Goa and another v. Hirabhai Somabhai Tandel, Nani, Daman, 1998 Cri.L.J. 386 where the Supreme Court has observed that where the SAFEMA proceedings are initiated, a subsequent petition filed by the relative of the detenu challenging the SAFEMA proceeding is not maintainable.

9. We have given our anxious consideration to the submissions advanced by both sides. Before we deal with the rival submissions, we may briefly refer to the provisions of the SAFEMA.

10. The SAFEMA is enacted to provide for the forfeiture of illegally acquired properties of smugglers and foreign exchange manipulators and for matters connected therewith or incidental thereto. Section 2 of the SAFEMA speaks about the application of the SAFEMA. From the point of view of the present petition, the material provisions are sections 2(1) & 2(2)(b). So far as they are relevant they read as under :

"2. Application. -

(1) The provisions of this Act shall apply only to the persons specified in sub-section (2).

(2) The persons referred to in sub-section

(1) are the following namely:-

(a) x x x

(b) every person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974)."

11. Proviso to section 2(2)(b) contains four sub-sections, which make existence of a detention order a pre-requisite for the application of the SAFEMA. Section (2)(2)(b)(iv) would be material for the present purpose.

The relevant portion thereof reads under :

"2. **Application.** - (1) x x x

(2) The persons referred to in sub-section (1) are the following namely:-

(a) x x x

(b) every person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974)."

Provided that -

(i) x x x

(ii) x x x

(iii) x x x

(iv) such order of detention has
not been set aside by a Court
of competent jurisdiction."

12. Section 2(2)(c) of SAFEMA makes SAFEMA applicable to every person, who is a relative of a person referred to in clause (a) or clause (b) of Section 2(2) of SAFEMA. Therefore SAFEMA is applicable to relative of a person in respect of whom the order of detention is made under COFEPOSA Act and which has not been set aside by a court of competent jurisdiction. Explanation (2) of section 2 describes the word "relatives". We may quote the same.

"Explanation 2.- For the purposes of clause
(c), "relative" in relation to a person,
means -

(i) spouse of the person;

(ii) brother or sister of the person;

(iii) brother or sister of the spouse of
person;

(iv) any lineal ascendant or descendant of
the person;

(v) any lineal ascendant or descendant of
the spouse of the person; (vi) spouse
of a person referred to in clause
(ii), clause (iii), clause (iv) or
clause (v);

(vii) any lineal descendant of a person
referred to in clause (ii) or clause
(iii)."

13. There can be no manner of doubt that the petitioners
in this group of petitions would be covered by this
explanation.

14. Section 6 of the SAFEMA contemplates a notice of
forfeiture, which reads thus:

"6. **Notice of forfeiture.** - (1) If,
having regard to the value of the
properties held by an person to whom this
Act applies, either by himself or through
any other person on his behalf, his known

sources of income, earnings or assets, any other information or material available to it as a result of action taken under section 18 or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than thirty days, to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Act.

(2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person."

15. Section 7 refers to forfeiture of property and provides for adjudication. Section 8 deals with burden of proof, which reads thus:

"8. Burden of proof. - In any proceedings under this Act, the burden of proving that any property specified in the notice served under section 6 is not illegally acquired property shall be on the person affected."

16. The order passed by the Competent Authority is appealable to the Tribunal under section 12(4). A reading of above provisions makes it amply clear that the condition precedent for exercising powers under the SAFEMA is passing of an order of detention under the COFEPOSA Act against a person. The Competent Authority gets the jurisdiction to issue show cause notice under section 6(1) of the SAFEMA only if such an order of detention is passed and it is not set aside and revoked by a court of competent jurisdiction.

17. We have already noted the gist of the notice under section 6(1) of the SAFEMA. The petitioner has filed a detailed reply through her Chartered Accountants to the said notice. We find that in the said reply, the petitioner has not disputed the existence of the order of detention passed against the said Mohammed Dossa. In the said reply, the petitioners have also not demanded a copy

of the order of detention. There is no grievance made in the reply about non-supply of copy of order of detention. Without raising any of these points, the petitioners have submitted themselves to the jurisdiction of the Competent Authority.

18. We have perused the said order dated 3/3/2000. The order does not reflect that at the time of hearing, any doubt was raised by the petitioners about the existence of the order of detention against the said Mohammed Dossa or any grievance was made about the non-supply of copy thereof to the petitioners. Mr. Dhakephalkar, the learned counsel for the petitioners has produced, for our perusal, a letter dated 15/3/1994 addressed by the Chartered Accountant of the petitioners to the Inspector, SAFEMA (NDPS) wherein a request seems to have been made for furnishing a copy of the order issued under section 3(1) of the COFEPOSA Act against said Mohammed Dossa. It is pertinent to note that whereas the show cause notice is dated 23/5/1995, this letter is dated 15/3/1994 and it is addressed to the Inspector of the SAFEMA. Therefore, it is absolutely clear that after the SAFEMA proceedings were initiated by the Competent Authority under section 6(1) of the SAFEMA, no request was made for supply of a copy of the detention order. To counter this submission of Mr. Lambay, Mr. Dhakephalkar contended that this letter is addressed after summons was issued under section 15 of the SAFEMA. That may be so, but the fact

remains that after the show cause notice was issued and, in fact the SAFEMA proceedings were initiated, no request was made to the Competent Authority for supply of a copy of the detention order or the grounds of detention. It is also significant to note that in the Memorandum of Appeal filed by the petitioners, no such contention was raised initially. This contention was raised only by amending the Memorandum of Appeal. Thus, there was a belated attempt on the part of the petitioners to raise a point or contention about the existence of the order of detention.

19. The Tribunal could have rejected this belated prayer of the petitioners. However, the Tribunal directed the production of the order. The order was accordingly produced before the Tribunal. The Tribunal got itself satisfied about the existence of the order and then rejected the petitioners' application. While dealing with the application of the petitioners, the Tribunal rightly observed that it directed production of the detention order because the detention order was made in exercise of the powers conferred under section 3 of the COFEPOSA Act, which alone confers jurisdiction on the Competent Authority for proceedings under SAFEMA. The Tribunal rightly relied on the judgment of the Supreme Court in **Smt. Alka Subhash Gadia's case (supra)** and rejected the petitioner's application.

20. In this connection, it would be necessary for us to

refer to the judgment of the Supreme Court in Smt. Alka Subhash Gadia's case (supra). In that case, the order of detention was issued against the husband of respondent 1 under section 3(1) of the COFEPOSA Act. The order could not be served as he was absconding. The notice was issued under section 6(1) of the SAFEMA. A copy of the notice was served on respondent 1. She, therefore, filed a writ petition under Article 226 of the Constitution of India before the High Court challenging the detention order as well as the show cause notice. The High Court held that the writ petition was maintainable for challenging the detention order even though the detenu was not served with the order and had thus not surrendered to the Authorities. The High Court directed that the detention order and the grounds of detention and the documents relied upon for passing the order be furnished to the detenu. A Special Leave Petition was then preferred against that order. While admitting the said Special Leave Petition, the Supreme Court stayed the High Court directions. Since the appeals involved question of great public interest and importance, the appeals were referred to a Bench of three judges. The larger bench of the Supreme Court then considered whether the detenu or any one on his behalf is entitled to challenge the detention order without the detenu submitting or surrendering to it. As a corollary to this question, the incidental question that was to be answered was whether the detenu or the petitioner on his behalf, as the case may be, is entitled to the detention order

and the grounds on which the detention order is made before the detenu submits to the order. While dealing with this question, the Supreme Court observed as under:

"32. This still leaves open the question as to whether the detenu is entitled to the order of detention prior to its execution at least to verify whether it can be challenged at its pre-execution stage on the limited grounds available. In view of the discussion aforesaid, the answer to this question has to be firmly in the negative for various reasons. In the first instance, as stated earlier, the Constitution and the valid law made thereunder do not make any provision for the same. On the other hand, they permit the arrest and detention of a person without furnishing to the detenu the order and the grounds thereof in advance. Secondly, when the order and the grounds are served and the detenu is in a position to make out prima facie the limited grounds on which they can be successfully challenged, the courts, as pointed out earlier, have power even to grant bail to the detenu pending the final hearing of his petition. Alternatively, as stated earlier, the Court can and does hear such

petition expeditiously to give the necessary relief to the detenu. Thirdly, in the rare cases where the detenu, before being served with them, learns of the detention order and the grounds on which it is made and satisfies the Court of their existence by proper affirmation, the Court does not decline to entertain the writ petition even at the pre-execution stage, of course, on the very limited grounds stated above. The Court no doubt even in such cases is not obliged to interfere with the impugned order at that stage and may insist that the detenu should first submit to it. It will however, depend on the facts of each case. The decisions and the orders cited above show that in some genuine cases, the courts have exercised their powers at the pre-execution stage, though such cases have been rare. This only emphasises the fact that the courts have power to interfere with the detention orders even at the pre-execution stage but they are not obliged to do so nor will it be proper for them to do so save in exceptional cases. Much less can a detenu claim such exercise of power as a matter of right. The discretion is of the Court and it has to be exercised judicially on well

settled principles.

34. In the present case, admittedly the proposed detenu is absconding and has been evading the service of the detention order. Respondent 1 who is his wife has sought to challenge the said order because the show-cause notice under sub-section (1) of Section 6 of the SAFEMA is issued to him, a copy of which is also sent to her. Thus the assistance of the High Court under Article 226 of the Constitution is sought by respondent 1 on behalf of the detenu to secure the order of detention with a view to defend the proceedings under the SAFEMA. In other words, the proposed detenu is trying to secure the order of detention indirectly without submitting to it. What is further, he is also trying to secure the grounds of detention as well as the documents supporting them which he cannot get unless he submits to the order of the detention. No prima facie case is made out either before the High Court or before us for challenging the order of detention which would impel the Court to interfere with it at this pre-execution stage. Unfortunately, the High Court disregarding the law on the subject and the long settled

principles on which alone it can interfere with the detention order at this stage has directed the authorities not only to furnish to the detenu the order of detention but also the grounds of detention and the documents relied upon for passing the detention order.

21. After so observing, the Supreme Court set aside the High Court's order directing furnishing of order and grounds of detention to the appellants. It is, therefore, clear that the person, who does not surrender to an order of detention is not entitled to a copy thereof. If an attempt is made to secure the order of detention, on the pretext of defending the proceedings under the SAFEMA, the court has to see through the attempt. It was contended by Mr. Dhakephalkar that the petitioners do not want to challenge the order of detention but all that they want to do is to find out the period during which the prejudicial activities are said to have been committed so that they can defend the notice by pointing out that these properties were not acquired during the said period. We find no difficulty in rejecting this submission. In our opinion, in the grounds of detention the detaining authority only records his satisfaction after considering the prejudicial activities that it is necessary to detain a person with a view to preventing him from indulging in prejudicial activities in future. There is no adjudication of the

facts in the grounds of detention. The order and grounds are based on apprehension. Under section 8 of the SAFEMA, burden is entirely on the person to whom the notice is issued to satisfy the Competent Authority that the property is not illegally acquired property. He has to establish that the source is not tainted and connected with the detenu. He has to satisfy the Competent Authority that the property in question cannot in any way be traced to the detenu. The period of the prejudicial activity is hardly material. In our opinion, in view of this, it cannot be said that it is necessary to furnish a copy of the grounds of detention to a person against whom the SAFEMA notice has been issued and where the detenu has been absconding.

22. We feel that the reliance placed by Mr. Dhakephalkar on Amritlal Chandmal Jain's case (supra) is misplaced. First of all, in that case the detenu had surrendered to the order of detention. The question involved in that case was whether when the court does not go into the merits of the controversy in writ of habeas corpus when detenu is released, the detenu on that count can be made to suffer holding that he did not successfully challenge his order of detention. There the court had not gone into a question of validity of the detention order but disposed of the matter on account of the fact that the detenu had already been released from detention. Against the backdrop of these facts the Supreme Court observed "we, therefore, cannot say that

challenge to the order of detention by Amritlal was unsuccessful and that he or his relatives or his associates were in any way debarred from challenging the order of detention subsequently when notices under the SAFEMA were issued to them". This judgment is no authority to canvass a proposition that the order of detention and the grounds of detention should be supplied to the relatives or associates of a person who does not surrender to the order of detention issued against him. This case, therefore, will have no application to the present case.

23. In Karimaben K. Bagad's case (supra), after the death of the detenu, proceedings under the SAFEMA were initiated against his wife. Prior to that, the order of detention was challenged by the husband of the petitioner on various grounds but the petition was disposed of by the High Court as infructuous on the ground that the order of detention was revoked by the Government. It is in this context that the Supreme Court observed that when the proceedings under the SAFEMA were initiated after the death of the detenu she could question the correctness of the grounds of detention while assailing the order of detention since a valid order of detention is a condition precedent for initiating proceedings under the SAFEMA. Such are not the facts here. Here the detenu is absconding and that makes all the difference.

24. It is true that in Mr. Bhanabhai Khalsapabhai Patel's

case (supra), this court has issued a direction to the concerned authorities that if they were to contemplate action under the SAFEMA before issuance of show cause notice under the SAFEMA, one month prior to it, copy of COFEPOSA detention order be served on the petitioner therein. It is significant to note that Alka Subhash Gadia's case (supra) was not pointed out this court and, therefore, the law on the point has not been discussed at all by it. This judgment therefore does not further the petitioner's case.

25. Referring to **Maneka Gandhi's case (supra)** it was argued that the principles of natural justice require that the detention order and the grounds of detention must be furnished to the Petitioner. In this regard we may only observe that in **Alka Gadia's case (supra)** attention of the Supreme Court was drawn to **Maneka Gandhi's case**. The said judgment is expressly referred to by the Supreme Court. This argument of Mr.Dhakephalkar must therefore fail.

26. In view of the authoritative pronouncement of the Supreme Court in Alka Subhash Gadia's case (supra), we are of the considered opinion that the petitioners are not entitled to a copy of the detention order and the grounds of detention. Their applications were rightly rejected by the Tribunal.

27. The learned Counsel for the parties are agreed that

our decision in criminal writ petition No.1217 of 2000 shall apply to all the other petitions.

28. In the view that we have taken, writ petition no.1217 of 2000 is dismissed and consequently all the other connected criminal writ petitions stand dismissed.

(SMT. RANJANA DESAI, J.)

(A.S. OKA, J.)